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ABATEMENT.

The rule that the death of a party to a suit, either pending the suit or after judgment and before execution, abates the suit, does not apply to a case where land has been sold upon execution, but no deed delivered. *Insley* v. *United States*, 512.

ACCORD AND SATISFACTION.

See PLEADING, 2.

ADMIRALTY.

1. This court has jurisdiction to review the judgment of the highest court of a State in an action at common law to recover damages caused by the collision of two steamers navigating inland waters over which the United States have admiralty jurisdiction, when that judgment denies rights claimed by the plaintiff in error under rules established by statutes of the United States for preventing collisions, or rights regarding the application of such rules. *Belden* v. *Chase*, 674.
2. A steam pleasure-yacht is an "ocean-going steamer," and is not a "coasting vessel." *Ib.*
3. A steam pleasure-yacht, on the inland waters of the United States, is bound, when under way, to carry at the foremast head a bright white light, on the starboard side a green light, and on the port side a red light, as prescribed by Rule 3 in Rev. Stat. § 4233; and is not required to carry "in addition thereto a central range of two white lights," as prescribed by Rule 7 of that section for "coasting steam-vessels . . . navigating the bays, lakes, rivers, or other inland waters of the United States," that rule not being applicable to a steam pleasure-yacht. *Ib.*
4. Regulations established by a board of supervising inspectors, under Rev. Stat. § 4412, "to be observed by all steam-vessels passing each other," have the force of statutory enactment; are obligatory from the time when the necessity for caution begins; and continue so while the means and opportunity to avoid the danger remain. *Ib.*
5. When a vessel, meeting or passing another vessel, departs from the rules laid down by the supervising inspectors, and a collision results, the burden of proof is on it to show that the departure was made necessary by immediate, impending, and alarming danger. *Ib.*
6. When a vessel has committed a positive breach of statute, she must not only show that her fault did not probably contribute to a disaster which followed, but that it could not have done so. *Ib.*

7. Two steamers on the Hudson River at night were approaching each other head and head. One gave a short blast from its whistle to indicate an intention to pass on the port side. The other answered by a similar blast, and then gave two whistles, and changed its course so as to cross the bow of the first vessel. This resulted in a collision whereby the second vessel was sunken. An action at law was brought in a state court by the owners of the sunken vessel against the owners of the first vessel. On the trial the court was asked to instruct the jury that the pilot who first blew the sharp whistle had the right to determine the course which each was to adopt; that the answer by a single whistle was an acceptance of his determination, and that it then became the duty of the second vessel to pass the other according to that determination; and that the second vessel was guilty of negligence in giving the two whistles and in changing its course. The court refused these instructions, and instructed the jury, in substance, that they were to determine whether those in management of the vessels were guilty of negligence or not, and whether they did or omitted to do that which persons of ordinary care and prudence ought to have done. *Held:* (1) That in refusing to give the instructions asked for and in charging in this general way, the obligatory force of the rules of navigation was substantially ignored; (2) That the instruction did not put to the jury the question whether the second vessel was justified in departing from the rules, which was error; (3) That the jury should have been told that two vessels approaching, head to head, and exchanging the signal of a single whistle, were bound to pursue the course prescribed by the rules; (4) And that they should have been further instructed that if the first vessel assented to the signal of the two whistles, and there was error in the course, it was at the risk of the second vessel, or, at the most, both were in fault and there could be no recovery. *Ib.*

See DAMAGES;
JURISDICTION, A, 24; D, 1.

ADVERSE POSSESSION.

See EJECTMENT, 1, 2;
EQUITY, 2, (5), 3.

ALASKA.

1. The commissioners appointed by the governments of the United States and of Russia for the transfer of Alaska under the treaty of March 30, 1867, 15 Stat. 539, had no power to vary the language of the treaty or to determine questions of title or ownership. *Kinkead* v. *United States*, 483.
2. The building constructed by the Russian-American Company in 1845 on land belonging to Russia became thereby, so far as disclosed by the

facts in this case, the property of the Russian government, and, being transferred to the United States by the treaty of March 30, 1867, no property or ownership in it remained in the Russian-American Company, which it could transfer to a private person adversely to the United States. *Ib.*

APPEAL.

1. An order allowing an appeal to this court is, so long as the appeal remains unperfected and the cause has not passed into the jurisdiction of the appellate tribunal, subject to the general power of a Circuit Court over its own judgments, decrees, and orders during the existence of the term at which they are made. *Aspen Mining & Smelting Co.* v. *Billings*, 31.
2. If a motion or petition for rehearing is made or presented in season and entertained by the court, the time limited for a writ of error or appeal does not begin to run until the motion is disposed of. *Ib.*
3. No appeal lies to this court from a judgment of a Circuit Court in execution of a mandate of the Circuit Court of Appeals. *Ib.*
4. When an appeal is allowed in open court, and perfected during the term at which the decree or judgment appealed from was rendered, no citation is necessary. *Jacobs* v. *George*, 415.
5. When an appeal is allowed at the term of the decree or judgment, but is not perfected until after the term, a citation is necessary to bring in the parties; but if the appeal be docketed here at the next ensuing term, or the record reaches the clerk's hands seasonably for that term, and legal excuse exists for lack of docketing, a citation may be issued, by leave of this court, although the time for taking the appeal has elapsed. *Ib.*
6. When an appeal is allowed at a term subsequent to that of the decree or judgment appealed from, a citation is necessary; but it may be issued, properly returnable even after the expiration of the time for taking the appeal, if the allowance of the appeal were made before. *Ib.*
7. A citation is one of the necessary elements of an appeal taken after the term, and if it be not issued and served before the end of the next ensuing term of this court, and be not waived, the appeal becomes inoperative. *Ib.*

ANCILLARY PROCEEDINGS.

See EQUITY, 2, (1).

BAILMENT.

See CONTRACT, 2.

BANK.

A bank, knowing that the county treasurer of the county had not sufficient county funds in his hands to balance his official accounts, consented to

give him a fictitious credit in order to enable him to impose upon the county commissioners, who were about to examine his accounts. They accordingly gave him a "cashier's check" for $16,571.61, which he endorsed and took to the commissioners. They received it, but refused to discharge him or his bondsmen, and placed the check and such funds as he had in cash in a box and delivered them to his bondsmen. The latter deposited the money and the check in another bank in the same place, which bank brought suit against the bank which issued the check to recover upon it. *Held*, (1) That the circumstances under which the check was issued were a plain fraud upon the law, and also upon the county commissioners; (2) That their receipt of it and turning it over to the sureties was a single act, intended to assist the sureties in protecting themselves, and was inconsistent with the idea of releasing them from their obligation; (3) That the question whether the evidence did or did not establish the fact that the county was an innocent holder should have been submitted to the jury. *Thompson* v. *Sioux Falls National Bank*, 231.

See EVIDENCE, 7.

BONA FIDE HOLDER.

See BANK;
EVIDENCE, 7.

BOUNDARY.

In an action to try the title to land, where there is conflicting evidence as to certain natural objects named in running the lines, an instruction to the jury that if, after fully considering the conflicting evidence they are left doubtful and uncertain, they will be justified in locating the grant by referring to such of the natural objects as are certain, is not error. *New York & Texas Land Co.* v. *Votaw*, 24.

CASES AFFIRMED OR FOLLOWED.

1. In this case the court follows its rulings in No. 3, *ante*, 1. *United States* v. *Denver & Rio Grande Railway*, 16.
2. This case is dismissed upon the authority of *Chapman* v. *Goodnow's Administrator*, 123 U. S. 540. *Wells* v. *Goodnow's Administrator*, 84.
3. This case is not distinguishable in principle from *United States Trust Company* v. *Wabash Western Railway Company*, 150 U. S. 287. *Seney* v. *Wabash Western Railway*, 310.
4. *Dean* v. *McDowell*, 8 Ch. D. 345, approved and followed. *Latta* v. *Kilbourn*, 524.

See COURT-MARTIAL;
EVIDENCE, 6;
JURISDICTION, A, 23;
PATENT FOR INVENTION, 12;
PUBLIC LAND, 6;
RAILROAD, 2, (2).

CASES DISTINGUISHED.

1. *Evans* v. *State Bank*, 134 U. S. 330, distinguished from this case. *Aspen Mining & Smelting Co.* v. *Billings*, 31.
2. *Case* v. *Beauregard*, 101 U. S. 688. *Sanger* v. *Upton*, 91 U. S. 56, and *Terry* v. *Anderson*, 95 U. S. 628, distinguished; and shown not to conflict with the subsequent cases of *Wabash, St. Louis & Pacific Railway* v. *Ham*, 114 U. S. 587; *Fogg* v. *Blair*, 133 U. S. 584; and *Hawkins* v. *Glenn*, 131 U. S. 319. *Hollins* v. *Brierfield Coal & Iron Co.*, 371.

CASES EXPLAINED.

United States v. *Langston*, 118 U. S. 389, explained and limited. *Belknap* v. *United States*, 588.

CHATTEL MORTGAGE.

See CONTRACT, 1.

CIRCUIT COURT COMMISSIONER.

See FEES, 2, 3.

CLOUD UPON TITLE.

See EQUITY, 2, (2).

COMMON CARRIER.

1. Where a bill of lading provides that in case of loss the carrier, if liable for the loss, shall have the benefit of any insurance that may have been effected on the goods, this provision limits the right of subrogation of the insurer to recover over against the carrier, upon paying to the shipper the loss. *Wager* v. *Providence Insurance Co.*, 99.
2. Where the carrier is actually and in terms the party assured, the underwriter can have no right to recover over against the carrier, even if the amount of the policy has been paid by the insurance company to the owner, on the order of the carrier. *Ib.*
3. The claim of the master of the vessel, through whose loss the loss of the goods insured took place, to exemption from liability to the insurance companies having been adjudicated against him, and the appeal to this court on that judgment having been dismissed for want of jurisdiction, he is estopped from again setting up that claim in this case. *Ib.*

CONFLICT OF LAW.

The possession of property by the judicial department, whether Federal or state, cannot be arbitrarily encroached upon, without violating the fundamental principle which requires coördinate departments to refrain from interference with the independence of each other. *In re Swan, petitioner*, 637.

CONSPIRACY.

See EVIDENCE, 6.

CONSTITUTIONAL LAW.

The act of February 26, 1885, 23 Stat. 332, c. 164, prohibiting the importation of aliens under contract to perform labor in the United States is constitutional. *Lees* v. *United States*, 476.

See JURISDICTION, A, 12 to 16.

CONTEMPT.

S. claiming to act as a constable in the State of South Carolina, and to act under the statute of that State touching intoxicating liquors known as the Dispensary Act, seized without warrant and carried away a cask of liquor which had been brought into the State by a receiver operating a railroad under authority of the Circuit Court of the United States for that district, and was held by him as an officer of that court, awaiting its delivery to the consignee. The receiver applied to the court which appointed him, setting forth the facts, and praying that S. be attached and punished for contempt, and be required to restore the property. A rule to show cause issued and S. appeared and made answer. The court adjudged him to be guilty of contempt, ordered him to be imprisoned until he return the property, and when that should be done that he be imprisoned for a further period of three months, and until he should pay the costs. *Held*, (1) That the Circuit Court had jurisdiction; (2) That its determination that the act of S. was illegal, and that he was in contempt, was not open to review in this proceeding; (3) That it was not necessary to determine whether he could be required to pay the costs, as he had not yet restored the goods, nor suffered the three months' imprisonment. *In re Swan, petitioner*, 637.

See WITNESS, 1.

CONTRACT.

1. A number of horses, mortgaged to secure the payment of a promissory note of their owner given to the mortgagee, were, under the provisions of a statute of Montana relating to chattel mortgages, sold by a sheriff on the maturity of the note without payment. With the assent of the attorney of the mortgagee, who was present at the sale, the purchaser paid a part of the purchase price in cash, and left the horses with the sheriff as security for payment of the remainder in five days. On the expiration of that time he failed to pay the balance. The attorney refused to receive the sum paid in cash and the horses as security for the remainder; but the principal received the amount paid in cash, and sued the sheriff and his bondsmen to recover the remainder. *Held*, that he could not repudiate the transaction in part and ratify it in part; and that having ratified it in part by the

receipt of the sum paid in cash, he could not maintain this action. *Rader* v. *Maddox*, 128.

2. In 1867 B. and S. entered into a contract which was evidenced by the following writings, signed by them respectively. (1) B. to S., dated September 18: "Enclosed please find our bill of sundry arms, etc., amounting to $39,887.60, for which amount please give us credit on consignment account. As mutually agreed, we consign these arms to your care, to be shipped to Mexico and to be sold there by you to the best advantage. Should these arms not be disposed of at the whole amount charged, we have to bear the loss. Should there be any profit realized over the above amount of bill, such profit shall be equally divided between yourself and us. Also, it is understood that all these goods are shipped by you free of any expenses to us, and that in case all or any of them should not be sold, they shall be returned to us free of all charges. As you have insured these goods, as well as other merchandise, we should be pleased to have the amount of $40,000 transferred to us. Please acknowledge the receipt of this, expressing your acquiescence in above, and oblige." Accompanying this was an invoice headed "S. in joint account with B." To this S. replied the same month: "I have the honor to acknowledge the receipt of your letter of the 18th inst., in which you enclose bill of sundry arms, amounting to $39,887.60, consigned to me upon certain conditions contained in said letter. In reply I have to say that I accept the terms of said conditions of consignment, and as soon as I obtain the policies of insurance upon said goods will transfer them to you." In October B. wrote S.: "Enclosed we beg to hand you our bill for muskets, amounting to $10,175, for which please give us credit on consignment account. As mutually agreed, we consign these arms to your care, to be shipped to Mexico, and to be sold there by you to the best advantage. Should these arms not be disposed of at the amount charged, we have to stand the loss. Should there be any profit realized over the amount, such profit shall be equally divided between yourself and us. It is also understood that these goods shall be shipped by you free of any expenses to us, and that in case they should not find a ready sale, they shall be returned to us free of all charges. Please attend to the insurance of this lot and have the amount transferred to us in one policy; also please acknowledge the receipt of this, stating your acquiescence in above." Accompanying this was an invoice headed: "S. bought of B. in joint account." The goods were shipped for their destination in Mexico. S. took out policies of insurance on the September shipments in his own name "for account of whom it might concern," which policies were handed to B. by direction of S. The October shipments reached their destination. A large part of the September shipments was lost. B. collected the insurance on such of the policies as were in his hands. *Held*, (1) That the contract was not a contract of sale of the goods

by B. to S., but a bailment upon the terms stated in the correspondence, and as it was clearly expressed in the writings between the parties, it could not be varied by the terms of the printed bill-head of the invoice; (2) That S., as bailee, was exempted by the common law from liability for loss of the consigned goods arising from inevitable accident; (3) That there was no undertaking in the contract on his part which took him out of the operation of the common law rule; (4) That the taking of the policies of insurance in his own name by S. did not tend, under the circumstances, to establish that he recognized his liability for the loss of the goods, as it was clear that, under a policy running to S. "for account of whom it might concern," B. could show and recover, in event of loss, his interest, which was a substantial one; (5) That certain statements made by S. did not amount to an estoppel, the rule being that a statement of opinion upon a question of law, where the facts are equally well known to both parties, does not work an estoppel. *Sturm* v. *Boker*, 312.

3. An employé in the Treasury Department, having obtained letters patent for an invention which proved to be of use in the department, executed an indenture to the department in which he said: "For the sum of one dollar and other valuable consideration to me paid by the said department, I do hereby grant and license the said United States Treasury Department and its bureaus the right to make and use machines containing the improvements claimed in said letters patent to the full end of the term for which said letters patent are granted." *Held*, that this instrument constituted a contract fully executed on both sides, which gave the right to the Treasury Department, without liability for remuneration thereafter, to make and use the machines containing the patented improvements to the end of the term for which the letters were granted; which contract could not be defeated, contradicted, or varied, by proof of a collateral parol agreement inconsistent with its terms. *McAleer* v. *United States*, 424.

4. The owners of a mine leased it to parties who agreed to pay certain royalties upon its products. The lease contained a further provision that "in case the royalty due and payable to the parties of the first part according to the above rates shall in any year fall below the sum of one thousand dollars, then the party of the second part shall pay to the parties of the first part such additional sum of money as shall make the royalty for such year amount to the sum of one thousand dollars, which sum shall be held and taken to be the royalty for that year: *Provided always*, That if sufficient ores cannot be found to yield said minimum payment, and said party of the second part shall in consequence thereof fail to pay said minimum sum of one thousand dollars yearly, then said party of the second part shall, if required by said parties of the first part, relinquish this lease and the privileges hereby granted, and the same shall cease thereupon." *Held*, that the lessees engaged to pay, as rent, in each year, the royalties fixed in the

lease; and if, in any year, the royalties fell below the sum of one thousand dollars, they were to make up the deficit, so that the latter sum should, in any event, be paid annually as rent. *Lehigh Zinc & Iron Co.* v. *Bamford*, 665.

See EQUITY 3;
FRAUDULENT REPRESENTATIONS;
PARTNERSHIP, 3.

COLLISION.

See ADMIRALTY.

CONTRIBUTORY NEGLIGENCE.

See NEGLIGENCE.

CORPORATION.

1. The trustee of a mortgage upon the real estate of an Alabama corporation commenced a suit in the Circuit Court of the United States for the foreclosure of the mortgage. In his bill he set up that some stockholders were liable for unpaid assessments on their stock, and, while asking for a foreclosure of the mortgage and sale of the property, he prayed that other creditors of the corporation might be permitted to intervene and become parties, and have their claims adjudicated, and that a full administration be had of the estate. About three months after the commencement of that suit, a contract creditor, who had not reduced his claim to judgment, filed his bill in equity in the same court, suing for his own benefit and that of all creditors who should become parties, asking to have the mortgage declared void, to have the property sold, and the proceeds applied to the payment of the debts of the creditors, parties to the suit, and for a liquidation. The plaintiff in the second suit did not intervene in the foreclosure suit. In due course a decree was entered in the foreclosure suit for the sale of the property. The court then entered a decree dismissing the creditor's bill upon the merits. *Held*, that this was error, and that the bill should have been dismissed for want of jurisdiction. *Hollins* v. *Brierfield Coal & Iron Co.*, 371.

2. Simple contract creditors of a corporation, whose claims have not been reduced to judgment, and who have no express lien on its property, have no standing in a Federal court of equity, to obtain the seizure of their debtor's property, and its application to the payment of their debts. *Ib.*

3. This rule is not affected by the fact that a statute of the State in which the property is situated, and in which the suit is brought, authorizes such a proceeding in the courts of the State, because the line of demarcation between equitable and legal remedies in the Federal courts cannot be obliterated by state legislation. *Ib.*

4. This rule is not affected by the fact that when such a suit is brought in a Federal court, another suit is pending there for the foreclosure of a mortgage upon the property of the corporation. *Ib.*
5. In such case the defence that the rights of the plaintiff at law should have been exhausted before commencing proceedings in equity is a defence which must be made *in limine*, and, if not so made, the court of equity is not necessarily ousted of jurisdiction. *Ib.*
6. Neither the insolvency of a corporation, nor the execution of an illegal trust deed, nor the failure to collect in full all stock subscriptions, nor all together give to a simple contract creditor of the corporation any lien on its property, or charge any direct trust thereon. *Ib.*
7. When a corporation becomes insolvent, the equitable interest of the stockholders in the property and their conditional liability to creditors, place the property in a condition of trust, first for creditors, and then for stockholders; but this is rather a trust in the administration of the assets after possession by a court of equity, than a trust, attaching to the property, as such, for the direct benefit of either creditor or stockholder. *Ib.*

See JURISDICTION, C, 2;
MANDAMUS, 3;
SERVICE OF PROCESS.

COSTS.

When costs are unnecessarily increased by the incorporation of useless papers, costs may be imposed upon the offending party under Rule 10, Paragraph 9; and they are imposed in this case. *Ball & Socket Fastener Co.* v. *Kraetzer*, 111.

See CONTEMPT.

COTENANT.

Cotenants stand in a relation of mutual trust and confidence towards each other, and a purchase by one of an outstanding title or incumbrance, for his own benefit, inures to the benefit of all, and when acquired, is held by him in trust for the true owner. *Turner* v. *Sawyer*, 578.

COURT AND JURY.

1. A statute of Arkansas, Digest of 1884, 425, c. 45, § 1498, provides that "an infant under twelve years of age shall not be found guilty of any crime or misdemeanor." The courts of that State have held, *Dove* v. *State*, 37 Arkansas, 261, that the common law presumption that a person between the ages of twelve and fourteen is incapable of discerning good from evil, until the contrary be affirmatively shown, still prevails. A homicide was committed in May. A young person, charged with the commission of it, testified on his trial in the Circuit Court for the Western District of Arkansas, in the following February, that he would be fifteen years old the coming March. The court charged the jury that the *prima facie* presumption as to lack of accountability ter-

minated at eleven years of age. *Held*, that, although the accused by his testimony had shown that he had passed the age of fourteen when the crime was committed, yet, as the mistake might have prejudiced him with the jury, it was error. *Allen* v. *United States*, 551.

2. To direct the attention of the jury to the contemplation of the philosophy of the mental operations, upon which justification, or excuse, or mitigation in the taking of human life may be predicated, is to hazard the substitution of abstract conceptions for the actual facts of the particular case, as they appeared to the defendant at the time. *Ib.*
3. When the defence, in a case of homicide, is justification, or excuse, or action in hot blood, the question is one of fact which must be passed upon by the jury in view of all the circumstances developed in evidence, uninfluenced by metaphysical considerations proceeding from the court. *Ib.*
4. The question whether the defendant in a capital case exceeded the limits of self-defence, or whether he acted in the heat of passion, is not to be determined by the deliberation with which a judge expounds the law to a jury, or with which a jury determines the facts, or with which judgment is entered and carried into execution. *Ib.*

See BANK;
NEGLIGENCE.

COURT-MARTIAL.

The proceedings of a court-martial held upon a captain of infantry in the army of the United States, which resulted in a judgment of dismissal from the service, having been transmitted to the Secretary of War "for the action of the President of the United States," the Secretary endorsed upon them that, "in conformity with the sixty-fifth of the rules and articles of war, the proceedings of the general court-martial in the foregoing cause . . . have been forwarded to the Secretary of War for the action of the President of the United States, and the proceedings, findings, and sentence are approved, and the sentence will be duly executed," and signed the endorsement officially as Secretary of War. *Held*, on the authority of *United States* v. *Fletcher*, 148 U. S. 84, that this was a sufficient authentication of the judgment of the President, and that there was no ground for treating the order as null and void for want of the requisite approval. *Ide* v. *United States*, 517.

COURT OF CLAIMS.

See NEW TRIAL, 3, 4.

CREDITORS' BILL.

See JURISDICTION, C, 5, 6.

CRIMINAL LAW.

1. On the trial of a person indicted for murder, it appeared that the deceased in a drunken fit assaulted the brother of the defendant,

that the defendant, who was dancing, left the dance, went in search of his pistol, returned with it and shot the offender, and that after going away, he returned a few minutes later, put the pistol close to the head of the deceased and fired a second time. The court below instructed the jury, in substance, that, if the defendant in a moment of passion, aroused by the wrongful treatment of his brother, and without any previous preparation, did the shooting, the offence would be manslaughter; but if he prepared himself to kill, and had a previous purpose to do so, then the mere fact of passion would not reduce the crime below murder. *Held*, that there was no error in this instruction. *Collins* v. *United States*, 62.

2. Upon a trial for murder in Arkansas, on cross-examination of witnesses to the defendant's character, and by his own testimony to meet evidence that he had since fled to Mississippi, it appeared that he had killed a negro in Mississippi two years before, and had since been tried and acquitted there. The district attorney, in his closing argument to the jury, said: "We know, from reading the newspapers and magazines, that trials in the State of Mississippi of a white man for killing a negro are farces. The defendant came from Mississippi with his hands stained with the blood of a negro." And he added other like expressions and declarations that the killing of a negro in Mississippi, for which the defendant had been tried and acquitted there, was murder. To all these declarations, expressions, and arguments of the district attorney, the defendant at the time objected, and, his objections being overruled by the court, alleged exceptions. *Held*, that he was entitled to a new trial. *Hall* v. *United States*, 76.
3. Where objection is made in a criminal trial to comments upon facts not in evidence or statements having no connection with the case or exaggerated expressions of the prosecuting officer, it is the duty of the court to interfere and put a stop to them if they are likely to be prejudicial to the accused. *Graves* v. *United States*, 118.
4. The wife of a person accused of crime is not a competent witness, on his trial, either on his own behalf or on the part of the government, and a comment to the jury upon her absence by the district attorney, permitted by the court after objection, is *held* to be reversible error. *Ib.*
5. H. was indicted jointly with R. for the murder of C. Before the day of trial R. was killed, whereupon H. was tried separately. It was clearly proved at the trial that H. did not kill C. nor take any part in the physical struggle which resulted in his death at the hands of R. There was evidence tending to show that by his language and gestures H. abetted R., but this evidence was given by persons who stood at some distance from the scene of the crime. H. denied having used such language, or any language with an intent to participate in the murder, and insisted that what he had said had been said under the apprehension that R., who was in a dangerous mood, was about to shoot him (H.). The court instructed the jury that it was proved

beyond controversy that R. fired the gun, and continued: "If the defendant was actually or constructively present at that time, and in any way aided or abetted by word or by advising or encouraging the shooting of C. by R., we have a condition which under the law puts him present at the place of the crime; and if the facts show that he either aided or abetted or advised or encouraged R., he is made a participant in the crime as thoroughly and completely as though he had with his own hand fired the shot which took the life of the man killed. The law further says that if he was actually present at that place at the time of the firing by R., and he was there for the purpose of either aiding, abetting, advising, or encouraging the shooting of C. by R., and that as a matter of fact he did not do it, but was present at the place for the purpose of aiding or abetting or advising or encouraging his shooting, but he did not do it because it was not necessary, it was done without his assistance, the law says there is a third condition where guilt is fastened to his act in that regard." *Held*, that this instruction was erroneous in two particulars: (1) It omitted to instruct the jury that the acts or words of encouragement and abetting must have been used by the accused with the intention of encouraging and abetting R.; (2) Because the evidence, so far as the court is permitted to notice it, as contained in the bills of exception, and set forth in the charge, shows no facts from which the jury could have properly found that the rencounter was the result of any previous conspiracy or arrangement. *Hicks* v. *United States*, 442.

See COURT AND JURY; JURISDICTION, D, 1, 2, 3; EVIDENCE, 1, 2, 3, 4, 5; WITNESS, 1, 2, 3.

CUSTOMS DUTIES.

1. Under the tariff act of 1883, a kind of sulphate of potash, the only common use of which, either by itself or in combination with other materials, is as manure or in the manufacture of manure, is within the clause of the free list which exempts from duty "all substances expressly used for manure"; and is not within the clause of "Schedule A. — Chemical Products," which imposes a duty on "potash, sulphate of, twenty per centum ad valorem." *Magone* v. *Heller*, 70.
2. In estimating the amount of duty to be imposed upon shell opera glasses under the tariff act of March 3, 1883, 22 Stat. 488, c. 121, the value of the materials should be taken at the time when they are put together to form the completed glass. *Seeberger* v. *Hardy*, 420.
3. The question whether the opera glasses should be regarded as falling within the description of paragraph 216, as a manufacture composed wholly or in part of metal is not raised by the record, and, no instruction based upon that interpretation having been asked of the court below, this court does not find it necessary to express an opinion on the subject. *Ib.*

DAMAGES.

In an action at common law for a maritime tort, the admiralty rule of an equal division of damages in case of a collision between two vessels, when both are guilty of faults contributing to it, does not prevail; but the general rule there is, that if both vessels are culpable in respect of faults operating directly and immediately to produce the collision, neither can recover damages for injuries so caused. *Belden* v. *Chase*, 674.

DISTRICT ATTORNEY.

See NATIONAL BANK, 2.

EJECTMENT.

1. A defendant in ejectment who relies on adverse possession during the statutory period as a defence must show actual possession — not constructive — and an exclusive possession — not a possession in participation with the owner, or others. *Ward* v. *Cochran*, 597.
2. A judgment rendered on a special verdict failing to find all the essential facts is erroneous; and consequently a special verdict in an action of ejectment, which finds that the grantor of the defendant entered into possession of the land in controversy under a claim of ownership, and that he remained in the open, continued, notorious, and adverse possession thereof for the period of sixteen years, when he sold and transferred the same to the defendant, who remained in open, continuous, notorious, and adverse possession of the same under claim of ownership down to the present time, is defective in that it does not find that the adverse possession was actual and exclusive. *Ib.*

EQUITY.

1. Where a contract is void at law for want of power to make it, a court of equity has no jurisdiction to enforce it, or, in the absence of fraud, accident, or mistake to so modify it as to make it legal, and then enforce it. *Hedges* v. *Dixon County*, 182.
2. In 1870, M., a citizen of Indiana, filed a bill in equity in the Circuit Court of the United States for the District of Nebraska against R., a citizen of Nebraska, to establish his right to real estate near Omaha, to which R. set up title. Each claimed under a judicial sale against P. M. obtained a decree in 1872, establishing his title, and directing R. to convey to him, or, in default of that, authorizing the appointment of a master to make the conveyance. R. refused to make the conveyance, and it was made by a master to M. under the decree. The entire interest of R. came by mesne conveyances to W., a citizen of Nebraska. M. reëntered upon the premises, and set up the title which had been declared invalid in the decree of 1872. W. thereupon filed in the same court an ancillary bill, praying that R. be restrained from asserting his pretended title and from occupying the

premises; that he might be decreed to have no interest in the lands; that a writ of possession issue, commanding the marshal summarily to remove R., his tenants and agents from the premises, and that R. be perpetually enjoined from setting up his claims. R. demurred on the ground of want of jurisdiction by reason of both parties being citizens of the same State. The demurrer was overruled, the defendant answered, and upon the pleadings and proofs a decree was entered for the plaintiff, in conformity with the prayer in the bill. *Held:* (1) That the bill was clearly a supplemental and ancillary bill, such as the court had jurisdiction to entertain, irrespective of the citizenship of the parties; (2) That the original decree not only undertook to remove the cloud on M.'s title, but it included and carried with it the right to possession of the premises, and that right passed to W. as privy in estate; (3) That certain facts set up as to an alleged transfer by M. of his interest to a citizen of Nebraska before filing his bill could not be availed of collaterally after such a lapse of time, and with no excuse for the delay; (4) That the property claimed could be fully identified; (5) That until R. should give notice that his holding was adverse to W., the latter was entitled to treat it as a holding in subordination to the title of the real owner under the decree of 1872. *Root* v. *Woolworth*, 401.

3. T. bought a tract of land in Kansas City of S. & W. under a contract on their part signed by K. as their agent, under which payments were to be made at stipulated times, notes bearing interest to be given for those sums, and a deed to be given on final payment. The agent's authority from W. was in writing; from S., it was verbal. W. died shortly after the contract was made, and before any payment matured. T. went into possession, gave the notes, made payable to K. or bearer, made payments to K. as they became due, without knowledge of the death of W., and improved the property by erecting buildings upon it. On making the last payment he was informed that W. had died. The interests of W. and S. became vested in L., who brought a suit in ejectment against the tenant of T. T. intervened in that suit and his equitable defence being overruled, filed a bill to restrain its further prosecution: *Held:* (1) That the death of W. revoked K.'s authority to act for him or his estate, and payments made to K. as his agent after his death did not discharge T.'s obligation to his estate; (2) That whether it also operated as a revocation of the verbal authority given by S., may admit of some doubt, but is unimportant in view of the long silence of S.; (3) That in view of the character of the notes, and in view of the fact that L. was not an innocent purchaser, but took title with full knowledge of the facts, including the open, notorious, and unequivocal possession of the property by T., the decree of the court below, granting a perpetual injunction on payment into court of one-half of the purchase money with interest, should be affirmed. *Long* v. *Thayer*, 520.

4. A decree in chancery, which determines that a partnership existed between the parties, that one partner is entitled to recover of the other a share in the profits of the partnership business, that the defendant partner account to the plaintiff partner, and that the case be referred to a master to state such account upon proofs, is not a final decree. *Latta* v. *Kilbourn*, 524.

5. Passing by the question whether a receiver appointed by a court pending proceedings to foreclose a railroad mortgage is precluded from buying bonds on the market or from agreeing to unite with others in bidding at the sale, and the question whether the contract set up in this case is within the statute of frauds of the State of Minnesota, and the question whether, even if the contract was illegal and not enforceable in a court of equity, an account might not be compelled, the court holds that the plaintiff has failed in proving his case. *Farley* v. *Hill*, 572.

6. In chancery proceedings in the Federal courts, when a plea in bar meets and satisfies all the claims of the bill and it is sustained, it will, under Equity rule 33, avail the defendant so far as to require a final decree in his favor. *Horn* v. *Detroit Dry Dock Co.*, 610.

7. In this case the proofs taken fully and clearly establish the truth of the matters set up and alleged in the defendants' plea, including the complainant's receipt in full satisfaction of all claims. *Ib.*

See CORPORATION;
COTENANT;
JURISDICTION, A, 22; C, 3 to 6;
MUNICIPAL BOND;
PARTNERSHIP, 1;
RAILROAD, 2.

ESTOPPEL.

See COMMON CARRIER, 3;
CONTRACT, 2, (5);
NEGLIGENCE.

EVIDENCE.

1. When the tendency of testimony offered in a criminal case is to throw light upon a particular fact, or to explain the conduct of a particular person, there is a certain discretion on the part of the trial judge which a court of errors will not interfere with, unless it manifestly appears that the testimony has no legitimate bearing upon the question at issue, and is calculated to prejudice the accused in the minds of the jurors. *Moore* v. *United States*, 57.

2. When a necessity arises for a resort to circumstantial evidence in a criminal trial, objections on the ground of relevancy are not favored, as the effect of circumstantial facts depends upon their connection with each other, and considerable latitude is allowed on the question of motive. *Ib.*

3. The fact that such testimony also has a tendency to show that the

defendant was guilty of the alleged offence is not sufficient reason for its exclusion, if otherwise competent. *Ib.*

4. Acting on these principles, the court sustains the ruling of the court below admitting testimony stated at length in the opinion, to show a motive for the alleged murder. *Ib.*
5. An exception to the denial of a motion for a new trial on the ground that the verdict was not supported by the evidence is untenable under repeated rulings of this court. *Ib.*
6. The ruling in *Logan* v. *United States*, 144 U. S. 263, that, "upon an indictment for conspiracy, acts or declarations of one conspirator, made after the conspiracy has ended, or not in furtherance of the conspiracy, are not admissible in evidence against the other conspirators," affirmed and followed. *Brown* v. *United States*, 93.
7. In an action at law against a bank to recover on a check drawn and issued by its cashier, if it be admitted that the check was obtained without consideration, and was invalid in the hands of the immediate payee, the plaintiff must prove either that he was a *bona fide* holder, or that the person from whom he received the paper had taken it for value without notice of defect in its inception. *Thompson* v. *Sioux Falls National Bank*, 231.

See BOUNDARY; CRIMINAL LAW, 4; INSURANCE; WITNESS, 1, 2.

EXCEPTION.

1. The verdict in this case was returned December 16, 1887, and judgment entered thereon on the same day. On the next day ten days were granted for filing a bill of exceptions, which time was extended from time to time, but the last extension expired before April 1, 1889, when they were settled and signed. *Held*, that the allowance of this bill of exceptions was not seasonable. *Morse* v. *Anderson*, 156.
2. The exception to the judge's charge does not embrace too large a portion of it, and is not subject to the often sustained objection, of not being sufficiently precise and pointed to call the attention of the judge to the particular error complained of. *Hicks* v. *United States*, 442.
3. It is well settled that, instead of preparing separate bills for each separate matter, all the alleged errors of a trial may be incorporated into one bill of exceptions; and the exception in this case is specific and direct to the one error of compelling the defendant to become a witness against himself, and comes within this rule. *Lees* v. *United States*, 476.
4. An express order of court during the judgment term, continuing a cause for the purpose of settling, allowing, signing, and filing a bill of exceptions, and the settlement and allowance and filing of the bill during the term to which the continuance was made, takes the exceptions out of the operation of the general rule, that the power to reduce exceptions to form and have them signed and filed is, under ordinary

circumstances, confined to the term at which the judgment is rendered. *Ward* v. *Cochran*, 597.

5. A bill of exceptions which, in so far as it relates to the charge, specifies with distinctness the parts excepted to, and the legal proposition to which exceptions are taken, is sufficient. *Ib.*

See EVIDENCE, 5;
JURISDICTION, A, 3.

EXECUTION.

See ABATEMENT.

EXECUTIVE.

See COURT-MARTIAL.

FEES.

1. A marshal of the United States is not entitled to commissions on disbursements for the support of a penitentiary, made under Rev. Stat. § 1892. *United States* v. *Baird*, 54.
2. A commissioner of a Circuit Court of the United States is not entitled, under Rev. Stat. § 847, to compensation for hearing charges made by complaining witnesses against persons charged with violations of the laws of the United States, and holding examinations of such complaining witnesses and any other witnesses produced by them in support of their allegation, and deciding whether a warrant should not issue upon the complaint made. *United States* v. *Patterson*, 65.
3. Although such services are of a judicial nature, and may be required by the laws of the State in which they are rendered, they cannot be charged against the United States in the absence of a provision by Congress for their payment. *Ib.*

FRAUD.

See BANK.

FRAUDULENT REPRESENTATIONS.

1. A person who makes representations of material facts, assuming or intending to convey the impression that he has actual knowledge of the existence of such facts, when he is conscious that he has no such knowledge, is as much responsible for the injurious consequences of such representations to one who believes and acts upon them, as if he had actual knowledge of their falsity. *Lehigh Zinc & Iron Company* v. *Bamford*, 665.
2. Deceit may be predicated of a vendor or lessor who makes material, untrue representations in respect to his own business or property, for the purpose of their being acted upon, and which are in fact relied upon by the purchaser or lessee, the truth of which representations the vendor or lessor is bound, and must be presumed, to know. *Ib.*

3. General assertions by a vendor or lessor, that the property offered for sale or to be leased is valuable or very valuable, although such assertions turn out to be untrue, are not misrepresentations, amounting to deceit, nor are they to be regarded as statements of existing facts, upon which an action for deceit may be based, but rather as the expressions of opinions or beliefs. *Ib.*
4. Fraud upon the part of a vendor or lessor, by means of representations of existing material facts, is not established, unless it appears such representations were made for the purpose of influencing the purchaser or lessee, and with knowledge that they were untrue; but where the representations are material and are made by the vendor or lessor for the purpose of their being acted upon, and they relate to matters which he is bound to know, or is presumed to know, his actual knowledge of their being untrue is not essential. *Ib.*

HABEAS CORPUS.

1. A writ of *habeas corpus* cannot be used to perform the office of a writ of error or appeal. *In re Swan, Petitioner*, 637.
2. When a person is imprisoned under a judgment of a Circuit Court which had no jurisdiction of the person or of the subject-matter, or authority to render the judgment, and no writ of error or appeal will lie, then relief may be accorded by writ of *habeas corpus*. *Ib.*

See JURISDICTION, A, 16.

HIGH SEAS.

See JURISDICTION, D, 1, 3.

INDIAN AGENT.

See SALARY, 3.

INSURANCE.

A policy of life insurance, payable in "thirty days after due notice and satisfactory evidence of death" and excepting this risk: "Suicide.—The self-destruction of the insured, in any form, except upon proof that the same is the direct result of disease or of accident occurring without the voluntary act of the insured," covers the case of the insured's death as the direct result of taking poison when his mind is so far deranged as to be unable to understand the moral character of his act, even if he does understand its physical consequences; and it is sufficient to prove this at the trial, without stating it in the preliminary proof of death. *Connecticut Mutual Life Insurance Co.* v. *Akens*, 468.

See COMMON CARRIER, 1, 2, 3.

JUDGMENT.

See EQUITY, 4, 6.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT.

1. The question whether an action to foreclose a lien for unpaid assessments for street improvements in San Francisco is *in rem* or *in personam*, is one upon which the decision of the Supreme Court of California is binding, and its ruling that a plaintiff who was no party to defendants' suits to foreclose, has a right to show by evidence *aliunde* the invalidity of the judgments obtained by them, is not a subject for review here. *Wood* v. *Brady*, 18.

2. In order to maintain a writ of error against a judgment of the highest court of a State, it must appear that the judgment involved a decision against a right, title, privilege, or immunity claimed by the plaintiff in error under the Constitution or laws of the United States, which was specially set up or claimed in the state court at the proper time and in the proper way; and, as the record in this case does not show such facts, the writ of error is dismissed without intimating any opinion upon the questions sought to be raised here. *Schuyler National Bank* v. *Bollong*, 85.

3. A general exception to a charge, which does not direct the attention of the court to the particular portions of it to which objection is made, raises no question for review. *Holder* v. *United States*, 91.

4. The denial of a motion for a new trial cannot be assigned for error. *Ib.*

5. In this case the writ of error was dismissed because the judgment below rested upon a construction by the state court of a statute of the State, which was sufficiently broad to sustain the judgment. *Miller* v. *Swann*, 132.

6. This court exercises appellate jurisdiction only in accordance with the acts of Congress on that subject. *Colorado Central Mining Co.* v. *Turck*, 138.

7. In order to bring an appeal from the judgment of a Circuit Court taken since the Judiciary Act of March 3, 1891, 26 Stat. 826, c. 517, went into effect, within the first of the six classes of cases specified in section 5 of that act, viz., "in any case in which the jurisdiction of the court is in issue," the jurisdiction of the Circuit Court below must have been in issue in the case, and must have been decided against the appellants, and the question of jurisdiction must have been certified; but the court does not now say that the absence of a formal certificate would necessarily be fatal. *Carey* v. *Houston & Texas Central Railway Co.*, 170.

8. The fifth section of that act does not authorize a direct appeal to this court in a suit upon a question involving the jurisdiction of the Circuit Court over another suit previously determined in the same court. *Ib.*

9. A bill in equity to impeach and set aside a decree of foreclosure of a railroad mortgage, on the ground of fraud, and to prevent the consum-

mation of a scheme for reorganization, is a separate and distinct case from the foreclosure suit, and no question of jurisdiction over that suit, or over the rendition of the decree passed therein, can be availed of to sustain an appeal to this court from a decree of a Circuit Court under the provisions of the first class of the six cases specified in section 5 of the act of March 3, 1891. *Ib.*

10. In order to hold an appeal from a judgment or decree of a Circuit Court to this court to be maintainable under the fourth class of said section 5, viz., "any case that involves the construction or application of the Constitution of the United States," the construction or application of the Constitution must be involved as controlling, although on the appeal all other questions might be open to determination. *Ib.*
11. The jurisdiction of this court in this case is limited by the act of February 25, 1889, 25 Stat. 693, c. 236, to the determination of the questions as to the jurisdiction of the Circuit Court. *Mississippi Mills* v. *Cohn*, 202.
12. The decision by the Supreme Judicial Court of Massachusetts that a creditor of an insolvent debtor, who proves his debt in insolvency, and accepts the benefit of proceedings under the state statute of May 13, 1884, entitled "An act to provide for composition with creditors in insolvency," Mass. Stats. 1884, c. 236, and the act amending the same, thereby waives any right which he might otherwise have had to object to the validity of the composition statutes, as impairing the obligation of contracts, presents no Federal question for review by this court. *Eustis* v. *Bolles*, 361.
13. To give this court jurisdiction of a writ of error to a state court, it must appear affirmatively, not only that a Federal question was presented for decision by the state court, but that its decision was necessary to the determination of the cause, and that it was decided adversely to the party claiming a right under the Federal laws or Constitution, or that the judgment, as rendered, could not have been given without deciding it. *Ib.*
14. Where the record discloses that, if a question has been raised and decided adversely to a party claiming the benefit of a provision of the Constitution or laws of the United States, another question, not Federal, has been also raised and decided against such party, and the decision of the latter question is sufficient, notwithstanding the Federal question, to sustain the judgment, this court will not review the judgment. *Ib.*
15. When this court, in a case brought here by writ of error to a state court, finds it unnecessary to decide any Federal question, its logical course is to dismiss the writ of error. *Ib.*
16. The Toledo and Ann Arbor Railway Company, which connected with the Michigan Southern Railway in the carrying on of interstate commerce, filed a bill in the Circuit Court to restrain the Michigan Southern from refusing to receive its cars used in such commerce,

and discriminating against it, on the ground that it employed engineers who were not members of the Brotherhood of Locomotive Engineers. An injunction was issued, and a few days later the Lake Shore applied for an order of attachment against some of its employés who had refused to haul cars and perform service for them, thus hindering them from complying with the order of the court in respect to the Toledo and Ann Arbor Company. A rule to show cause was issued, and such proceedings had thereunder that one of the employés was adjudged guilty of contempt, was fined, and was ordered to be committed until payment of the fine. This employé applied to the Circuit Court for a writ of *habeas corpus*. The petition, after setting the facts forth, claimed that the Circuit Court had no jurisdiction of the cause in which the original order of injunction had been issued, for reasons stated, and further, that it had no jurisdiction of the petitioner's person, because he was no party to that suit, and had not been served with process. The application was denied and the petition dismissed, from which judgment the petitioner appealed to this court. *Held*, (1) That while the general right of appeal from the judgments of Circuit Courts on *habeas corpus* directly to this court is taken away by the act of March 3, 1891, 26 Stat. 826, c. 517, nevertheless, that right still exists in the cases designated in section 5 of that act; (2) That the jurisdiction of the Circuit Court over the petition for *habeas corpus* was not in issue, and was not decided adversely to the petitioner, and this appeal therefore did not come within the first of the classes named in section 5 of the act of 1891; (3) That the construction or application of the Constitution was not involved, in the sense of the statute, and that the petition did not proceed on that theory, but on the ground of want of jurisdiction in the prior case over the subject-matter, and in this case over the person of the petitioner; (4) That the appeal must be dismissed. *In re Lennon*, 393.

17. Findings of fact in an action brought to recover duties on importations paid under protest, which do not show what the collector charged the plaintiff, nor sufficiently describe the articles imported, and a record which fails to show under what provisions of the tariff act the parties claimed respectively, leave this court unable to direct judgment for either party. In such case the opinion of the court below cannot be resorted to to help the findings out. *Saltonstall* v. *Birtwell*, 417.
18. This court must determine for itself whether it has jurisdiction under Rev. Stat. § 709, to review the judgment of a state court; and the certificate of the presiding judge of the State that a state of case exists for the interposition of this court cannot, of itself, confer jurisdiction upon it to reëxamine a judgment of that court. *Powell* v. *Brunswick County*, 433.
19. It is essential to the maintenance of the jurisdiction over the judgment of the state court, upon the ground of erroneous decision as to

the validity of a state statute or a right under the Constitution of the United States, that it should appear from the record that the validity of such statute was drawn in question, as repugnant to the Constitution, and that the decision sustained its validity, or that the right was specially set up or claimed, and denied. *Ib.*

20. It is well settled that the construction put upon a state statute by the highest court of the State will generally be followed by this court, unless it conflicts with the Constitution or a Federal statute, or a general rule of commercial law. *Ib.*
21. Applying these rules, it was *held* that the construction put by the Supreme Court of Appeals of the State of Virginia in *Taylor* v. *Supervisors*, 86 Virginia, 506, upon the provision in the charter of the Atlantic and Danville Railway Company considered in this suit, leaves no Federal question for this court. *Ib.*
22. When, in a suit in equity for the infringement of letters patent, the court below makes an interlocutory decree in plaintiff's favor, and then entertains a motion for a rehearing and receives affidavits in support of it, and denies the motion, this court does not feel itself at liberty to consider those affidavits. *Giles* v. *Heysinger*, 627.
23. The court follows *Hammond* v. *Johnston*, 142 U. S. 73, on a substantially similar state of facts, and holds that the ruling of the state court was broad enough to maintain the judgment, without considering the Federal question. *Hammond* v. *Connecticut Mutual Life Insurance Co.*, 633.
24. The appellate jurisdiction of this court over questions national and international in their nature, arising in an action for a maritime tort committed upon navigable waters and within admiralty jurisdiction, cannot be restrained by the mere fact that the party plaintiff has elected to pursue his common law remedy in a state court. *Belden* v. *Chase*, 674.

See ADMIRALTY, 1; APPEAL, 3; EQUITY, 4; JURISDICTION, B; MANDAMUS, 2.

B. JURISDICTION OF CIRCUIT COURTS OF APPEAL.

When the jurisdiction of a Circuit Court is invoked solely on the ground of diverse citizenship, the judgment of the Circuit Court of Appeals is final, although another ground for jurisdiction in the Circuit Court may be developed in the course of subsequent proceedings in the case. *Colorado Central Mining Co.* v. *Turck*, 138.

C. JURISDICTION OF CIRCUIT COURTS.

1. When the original jurisdiction of a Circuit Court of the United States is invoked upon the sole ground that the determination of the suit depends upon some question of a Federal nature, it must appear, at

the outset, from the pleadings, that the suit is one of that character, of which the Circuit Court could properly take cognizance at the time its jurisdiction is invoked. *Colorado Central Mining Co.* v. *Turck*, 138.

2. A bill in equity in the Circuit Court of the United States in Tennessee, by a corporation organized under the laws of the State of Kentucky, against another company described as a corporation organized under the laws of that State and having its principal office in the district in which the suit was brought, and against five individuals, citizens of a county within that district, prayed "that the parties named as defendants be made such," and for a reconveyance and an account of property of the plaintiff, alleged to have been fraudulently caused by the individual defendants to be conveyed to the defendant corporation, and to have been wasted and injured by all the defendants. The individual defendants demurred for want of jurisdiction. The plaintiff thereupon, by leave of court, filed an amended bill, which "refers to the original bill and its prayer, and makes the same a part hereof, as if set out herein *in hæc verba;*" and further alleged that the individual defendants, in pursuance of their fraudulent scheme, pretended to procure from the State of Kentucky a charter under the name of the company "which is the same corporation mentioned in the original bill," and caused the plaintiff's property to be conveyed "to said pretended corporation," but this company was never lawfully organized, and the individual defendants controlled it and were doing business as a partnership under its name; and prayed that the parties defendants to the original bill be made defendants to this amended bill, and that the individual defendants be made defendants as partners under the name of the company, and be made to account personally and individually. *Held*, that this company, as a corporation of Kentucky, was a party defendant to the amended bill of the plaintiff, likewise a Kentucky corporation; and that the amended bill must therefore be dismissed for want of jurisdiction. *Empire Transportation Co.* v. *Empire Mining Co.*, 159.

3. The jurisdiction of Federal courts, sitting as courts of equity, cannot be enlarged or diminished by state legislation. *Mississippi Mills* v. *Cohn*, 202.

4. Whether such a court has jurisdiction in equity over a particular case, will be determined by inquiring whether by the principles of common law and equity, as distinguished and defined in this country and in the mother country at the time of the adoption of the Constitution of the United States, the relief sought in the bill was one obtainable in a court of law, or one which only a court of equity was fully competent to give. *Ib.*

5. A creditors' bill, to subject property of the debtor fraudulently standing in the name of a third party to the payment of judgments against the debtor, is within the jurisdiction of a Federal court, sitting as a court of equity, although, in the courts of the State in which the Federal

court sits, state legislation may have given the creditor a remedy at law. *Ib.*

6. N. and S., being citizens of Louisiana, obtained a judgment in a court of the State against C., also a citizen of Louisiana, which they assigned to W. and L., citizens of Missouri. The assignees thereupon brought suit against C. in the Circuit Court of the United States for the Western District of Louisiana, putting the jurisdiction on the ground of diverse citizenship. *Held*, that under the provisions of § 1 of the act of March 3, 1875, 18 Stat. 470, c. 137, which statute was in force when the suit was commenced, it could not be maintained. *Ib.*
7. In the act of March 3, 1887, c. 373, § 1, as corrected by the act of August 13, 1888, c. 866, giving the Circuit Courts of the United States original jurisdiction, "concurrent with the courts of the several States," of all suits of a civil nature, in which the matter in dispute exceeds $2000 in amount or value, "arising under the Constitution or laws of the United States" or in which there is "a controversy between citizens of a State and foreign States, citizens or subjects," the provision that "no civil suit shall be brought against any person by any original process or proceeding in any other district than that whereof he is an inhabitant," is inapplicable to an alien or a foreign corporation sued here, and especially in a suit for the infringement of a patent right; and such a person or corporation may be sued by a citizen of a State of the Union in any district in which valid service can be made upon the defendant. *In re Hohorst*, 653.

See CONTEMPT, (2); EQUITY, 2, (1); CORPORATION, 1; MUNICIPAL BOND.

D. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

1. The term "high seas," as used in the provision in Rev. Stat. § 5346, that "every person who, upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular State, on board any vessel belonging in whole or part to the United States, or any citizen thereof, with a dangerous weapon, or with intent to perpetrate any felony, commits an assault upon another shall be punished," etc., is applicable to the open, unenclosed waters of the Great Lakes, between which the Detroit River is a connecting stream. *United States* v. *Rodgers*, 249.
2. The courts of the United States have jurisdiction, under that section of the Revised Statutes, to try a person for an assault with a dangerous weapon, committed on a vessel belonging to a citizen of the United States, when such vessel is in the Detroit River, out of the jurisdiction of any particular State, and within the territorial limits of the Dominion of Canada. *Ib.*
3. The limitation of jurisdiction by the qualification that the offences punishable are committed on vessels in any arm of the sea, or in any

river, haven, creek, basin, or bay "without the jurisdiction of any particular State," which means without the jurisdiction of any State of the Union, does not apply to vessels on the "high seas" of the lakes, but only to vessels on the waters designated as connecting with them; and so far as vessels on those seas are concerned, there is no limitation named to the authority of the United States. *Ib.*

4. A District Court of the United States has jurisdiction over an action to recover a penalty imposed for a violation of the act of February 26, 1885, 23 Stat. 332, c. 164, "to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia." *Lees* v. *United States*, 476.
5. As a District Court of the United States has jurisdiction under Rev. Stat. § 563, of all suits to recover forfeitures incurred under any law of the United States, including forfeitures of a bail bond, the question whether the forfeiture should be enforced by *scire facias* under Rev. Stat. § 716, or by proceedings under a law of the State in which the court is held, goes only to the remedy and not to the jurisdiction, and the action of the District Court is binding in a collateral proceeding. *Insley* v. *United States*, 512.

E. JURISDICTION OF THE COURT OF CLAIMS.

The Court of Claims was not estopped by the recitals in the act of January 17, 1887, 24 Stat. 358, c. 21, referring this case to it, from considering the question of the title of the claimants to the property whose value is sought to be recovered. *Kinkead* v. *United States*, 483.

LACHES.

See MANDAMUS, 3;
PATENT FOR INVENTION, 12, (3);
SALARY, 2.

LEASE.

See CONTRACT, 4;
RAILROAD, 2.

LIEN.

See CORPORATION, 2, 3, 4, 5, 6.

MARSHAL.

See FEES, 1.

MANDAMUS.

1. This court cannot, by writ of mandamus, compel a court below to decide a matter before it in a particular way. *In re Parsons*, 150.

2. This court cannot, through the instrumentality of a writ of mandamus, review the judicial action of a court below, had in the exercise of its legitimate jurisdiction. *Ib.*

3. If a suit brought in the Circuit Court of the United States against a foreign corporation and against individuals is erroneously dismissed as against the corporation for want of jurisdiction thereof, mandamus lies to compel that court to take jurisdiction of the suit as against the corporation. And when an appeal, taken by the plaintiff to this court within six weeks from the order of dismissal, remains upon the docket, without any motion by the appellee to dismiss it, until the case is reached for argument, and is then dismissed by the court for want of jurisdiction, and the plaintiff, within five weeks afterwards, applies for a writ of mandamus, there is no such laches as should deprive him of this remedy. *In re Hohorst*, 653.

MINERAL LAND.

In a suit in equity to have T. declared a trustee, for the use of S., of an interest in a mine, and to compel a conveyance of the same to S., T. set up two sources of independent title in himself: (1) the purchase of a portion of the interest at an execution sale under a judgment in a suit in which process was not served upon S., no appearance entered for him, no judgment entered against him, and in which he was never in court; (2) proceedings under Rev. Stat. § 2324 by T. against S. as an alleged "coöwner" of the mine to compel him to contribute to the payment of the annual labor on the mine for the year 1884, by which proceeding it was claimed that the interest of S. in the mine became forfeited to T. At the time when the labor was done for which contribution was demanded, S. had not received the deed for his interest, and the sheriff's deed to T. of the interest which he claimed was not delivered until March, 1885. *Held*, (1) That T. acquired no interest in the share of S. in the mine by the sheriff's deed; (2) That T. was not a coöwner in the mine with S. during the year 1884, within the meaning of the statute, which, as it provides for the forfeiture of the rights of a coöwner, should be construed strictly. *Turner* v. *Sawyer*, 578.

MORMON CHURCH.

Congress having, by joint resolution approved October 25, 1893, declared the uses to which the property of the Mormon Church should be devoted, the court remands this case for further proceedings in the Supreme Court of the Territory in conformity with the provisions of that resolution. *United States* v. *Mormon Church*, 145.

MUNICIPAL BOND.

Holders of municipal bonds, issued by a county in excess of its authority, cannot, by an offer to surrender and cancel so much of such bonds as

may, upon inquiry, be found to exceed the limit authorized by law, invest a court of equity with jurisdiction to ascertain the amount of such excess, and to declare the residue of such bonds valid and enforce the payment thereof against the county. *Hedges* v. *Dixon County*, 182.

MURDER.

See CRIMINAL LAW.

NATIONAL BANK.

1. The receiver of a national bank is an officer and agent of the United States within the meaning of those terms as used in Rev. Stat. § 380, providing that all suits and proceedings arising out of the provisions of law governing national banking associations, in which the United States or any of its officers or agents are parties, shall be conducted by the District Attorneys of the several districts, under the direction and supervision of the Solicitor of the Treasury. *Gibson* v. *Peters*, 342.
2. If a District Attorney of the United States, acting under the provisions in Rev. Stat. § 380, conducts a suit or proceeding arising out of the provisions of law governing national banking associations, he is entitled to no remuneration other than that coming from his salary, from the compensation and fees authorized to be taxed and allowed, and such additional compensation as is expressly allowed by law, specifically, on account of services named. *Ib.*

NEGLIGENCE.

1. Though questions of negligence and contributory negligence are, ordinarily, questions of fact to be passed upon by a jury, yet, when the undisputed evidence is so conclusive that the court would be compelled to set aside a verdict returned in opposition to it, it may withdraw the case from the consideration of the jury, and direct a verdict. *Elliott* v. *Chicago, Milwaukee & St. Paul Railway*, 245.
2. Plaintiff sued defendant in a Circuit Court of the State of Michigan on the cause of action for which this suit is brought. Verdict and judgment were in plaintiff's favor in the trial court. This judgment was reversed by the Supreme Court of the State, and a new trial was ordered. When the case was remanded plaintiff voluntarily withdrew his action and submitted to a nonsuit which was not to prevent his right to bring any suit in any court. He then commenced this action in the Circuit Court of the United States. The defendant contended (1) that plaintiff was estopped from bringing this action by the judgment in the state court; (2) that the record showed no negligence on the part of the defendant, and that a verdict should have been directed in its favor. The Circuit Court overruled the first contention of the defendant, but accepted the second, and directed a verdict for defend-

ant. *Held*, (1) That the plaintiff was not estopped from bringing this action by the proceedings and judgment in the state court; (2) That the evidence in regard to negligence was conflicting, and the question should have been left to the jury under proper instructions. *Gardner* v. *Michigan Central Railroad Co.*, 349.

3. The question of negligence in such case is one of law for the court only when the facts are such that all reasonable men must draw the same conclusion from them; or, in other words, a case should not be withdrawn from the jury unless the conclusion follows as matter of law that no recovery can be had upon any view which can be properly taken of the facts the evidence tends to establish. *Ib.*

NEW TRIAL.

1. An application for a rehearing cannot be entertained when presented after the expiration of the term at which the judgment was rendered. *Bushnell* v. *Crooke Mining Co.*, 82.
2. Ordinarily a court has no power to grant a new trial at a term subsequent to that at which the original judgment was rendered. *Belknap* v. *United States*, 588.
3. The Court of Claims, however, under Rev. Stat. § 1088, has power to grant a new trial in such case on a motion on behalf of the United States, and a mandate from this court does not affect that power. *Ib.*
4. When such a motion is made on behalf of the government on the ground that its officers understood that there was an agreement that a case which had been appealed to this court by the United States, and had been remanded to that court by this court, on the ground that the appellants had not entered it here, was to abide the result in another case appealed from the Court of Claims by the United States and decided here in their favor, the granting of the motion by the Court of Claims must be taken by this court as conclusive on the question whether there was sufficient evidence to establish the facts stated as the ground of the motion, when that evidence is not preserved. *Ib.*

See APPEAL, 2;
JURISDICTION, A, 4, 22.

OKLAHOMA.

See PUBLIC LAND, 4, 5.

PARTNERSHIP.

1. The plaintiff set up in his bill a verbal contract of partnership between the defendant and himself in the buying and selling of real estate, and called for an answer under oath. The defendant answered under oath, denying positively and in direct terms the existence of the alleged contract of partnership. *Held*, that, under well settled rules of equity pleading and practice, this answer could be overcome only by the tes-

timony of at least two witnesses, or of one witness with corroborating circumstances, and that the proofs in this case fail to break down the defendant's denial. *Latta* v. *Kilbourn*, 524.

2. The violation by one partner of his undertaking to give to the firm or his associate an opportunity or option to engage in any particular transaction, not within the scope of the firm's business, does not entitle his copartners to convert him into a constructive trustee in respect to the profits realized therefrom. *Ib.*
3. An agreement by partners that no one of them should engage in the buying and selling of real estate on his own account does not entitle the other partners to share in profits made by one of them in real estate speculations, entered into by him without first securing the assent of his copartners. *Ib.*
4. If a member of a partnership uses information obtained by him in the course of the transaction of the partnership business, or by reason of his connection with the firm, for purposes wholly without the scope of the partnership business, and not competing with it, the firm is not entitled to an account of any benefit derived therefrom. *Ib.*

See EQUITY, 4.

PATENT FOR INVENTION.

1. The first claim under the reissued letters patent No. 10,361, issued to Henry L. Spiegel, July 31, 1883, for improvements in cabinet locks, is void because it broadens and expands the claims in the original patent, and it does not appear that there was any accident, inadvertence, or mistake in the specification and claim of the original, or that it was void or inoperative for any reason which would entitle the patentee to have a reissue. *Corbin Cabinet Lock Co.* v. *Eagle Lock Co.*, 38.
2. When an applicant for letters patent makes a broad claim which is rejected, and he acquiesces in the decision and substitutes a narrower claim therefor, he cannot insist upon a construction of the narrowed claim which would cover what was so rejected. *Ib.*
3. To warrant new and broader claims in a reissue, they must not only be suggested or indicated in the original specification, drawings, or models, but it must appear that they constitute part of the invention intended to be covered by the original patent. *Ib.*
4. In applications for reissue the patentee cannot incorporate claims covering what had been rejected on the original application. *Ib.*
5. Letters patent No. 316,411, granted April 21, 1885, to Henry L. Spiegel for improvements in cabinet locks, are void for want of patentable invention. *Ib.*
6. The first claim in letters patent No. 77,878, granted May 11, 1868, to James F. Gordon, was a claim "for a binding arm capable of adjustment in the direction of the length of the grain, in combination with an automatic twisting device, substantially as and for the purposes described;" and it was not infringed by the devices used by the

defendants for attaining the common purpose of securing the stalks of grain into bundles by passing around them a band at the middle of the stalks. *Gordon* v. *Warder*, 47.

7. The fourth and seventh claims in letters patent No. 325,688, issued to Albert G. Mead, September 8, 1885, for a "button" are not infringed by glove fasteners manufactured under letters patent Nos. 359,614 and 359,615, issued to Edwin J. Kraetzer, March 22, 1887; and though it would be possible to make out a literal infringement of the sixth claim, by construing the claim broadly, the court holds that the patentee is not entitled to such construction. *Ball & Socket Fastener Co.* v. *Kraetzer*, 111.
8. There is no equity in charging infringement upon a defendant in a patent suit, in consequence of an apparently accidental adoption of an immaterial feature of the plaintiff's patent. *Ib.*
9. The alleged invention patented in letters patent No. 123,142, issued January 30, 1872, to Philo D. Beckwith for "an improvement in stoves," was anticipated by prior patents and is void for want of invention in not describing how wide the flange should be in order to accomplish the desired result. *Howard* v. *Detroit Stove Works*, 164.
10. Letters patent No. 135,621, issued February 11, 1873, to Philo D. Beckwith for "novel improvements in a stove," are void because the bolting or riveting together of sections of a stove was well known at the time of the alleged invention, and the use of lugs with holes perforated through them was anticipated in other stoves and furnaces manufactured many years prior to the date of the patent. *Ib.*
11. Letters patent No. 206,074, issued to Philo D. Beckwith, July 16, 1878, for a "new and useful improvement in stove grates," is void because the claims in it were clearly anticipated, and because it involved no invention to cast in one piece an article which had formerly been cast in two pieces and put together, nor to make the shape of the grate correspond with that of the fire-pot. *Ib.*
12. In 1871 L. & B., being partners, commenced the manufacture of hydraulic elevators in Cincinnati. S. was employed by them as engineer and draughtsman at a fixed salary of $1200 per annum. While in their employ, and while using their tools and patterns, he invented a stop-valve in 1872, which was patented in February, 1876. In 1876 the partnership was dissolved, and a corporation was formed, called the L. & B. Company, in which the same business was instantly vested in the same interests, and remained there. Meanwhile S. ceased in 1874 to serve L. & B. as engineer and draughtsman, and went into their employ as consulting engineer, at a salary of $2000 per annum. The duties of the latter office did not require him to reside in Cincinnati. He served the partnership in this capacity up to its dissolution, and from that time served the corporation in the same capacity up to 1884. The partnership with his knowledge used his valve in the elevators constructed by them until its dissolution,

and after that the corporation used it in the same way and with the like knowledge. In 1884 S. severed his connection with the corporation. During all this time he made no claim for remuneration for the use of his patent, and when asked why he had not, replied that he did not desire to disturb his friendly relations with the L. & B. Company. In 1884 he filed this bill in equity, with the usual prayers for an accounting and for an injunction. *Held*, (1) That, on authority of *McClurg* v. *Kingsland*, 1 How. 202, it might be presumed that S. had licensed L. & B. and the L. & B. Company to use his invention; (2) That, on the authority of *Solomons* v. *United States*, 137 U. S. 342, it might be presumed that S. had recognized an obligation, flowing from his employment by the partnership and by the corporation, to permit them to use his invention; (3) That he was guilty of laches in allowing so long a period to elapse before asserting his rights; (4) That the excuse he gave for not asserting them was entitled to a less favorable consideration by a court of equity than if his conduct had been that of mere inaction. *Lane & Bodley Co.* v *Locke*, 193.

13. The second claim in letters patent No. 233,240, for improvements in dress forms, issued October 12, 1880, to John Hall, and by him assigned to Charles A. Morss, viz.: "2. In combination with the standard a and ribs c, the double braces e^2, the sliding blocks f^1 and f^2, and rests h^1 and h^2, substantially as and for the purposes set forth," when read and interpreted with reference to other and broader claims which were made by the patentee and were rejected by the Patent Office, must either be held to be invalid for want of invention, or must be so limited in view of that action by the Patent Office, and in view of the prior state of the art, as not to be infringed by a combination leaving out one of the elements of the patentee's device. *Knapp* v. *Morss*, 221.
14. A claim in letters patent cannot be so construed as to cover what was rejected by the Patent Office on the application for the patent. *Ib.*
15. The combination of old elements which perform no new function, and accomplish no new results, does not involve patentable novelty. *Ib.*
16. The end or purpose sought to be accomplished by a device is not the subject of a patent, but only the new and useful means for obtaining that end. *Ib.*
17. Letters patent 248,646, granted to Charles Gordon, October 25, 1881, for "an improved apparatus for cooling and drawing beer" are void for want of patentable novelty, and the invention patented was anticipated. *Magin* v. *Karle*, 387.
18. The first claim in letters patent No. 218,300, issued August 5, 1879, to William Mills and Christian H. Hershey, for an improvement in hair-crimpers, viz.: "A hair-crimper consisting of a non-elastic metal core C, and braided covering A, said covering A being cemented to said core C throughout its entire length, substantially as described," is void for want of novelty. *Giles* v. *Heysinger*, 627.

See CONTRACT, 3.

PLEADING.

1. While it is true that a receipt is open to explanation by parol proof to show what its real consideration was, the issue to that effect must be raised by the pleadings, and must have been taken in the court below, to be available here. *Horn* v. *Detroit Dry Dock Co.*, 610.
2. An accord and satisfaction cannot be set aside for mutual mistakes in regard to material facts, if the alleged mistakes have not been set up by proper pleadings. *Ib.*

PRACTICE.

1. Oral argument is not allowed on motions to dismiss appeals or writs of error. *Carey* v. *Houston & Texas Central Railway Co.*, 170.
2. On motion to dismiss or affirm it is only necessary to print so much of the record as will enable the court to act understandingly without referring to the transcript. *Ib.*

See EXCEPTION, 1; NEW TRIAL; JURISDICTION, A, 17, 22; WITNESS, 1.

PRINCIPAL AND AGENT.

See CONTRACT, 1.

PROMISSORY NOTE.

See EVIDENCE, 7.

PUBLIC LAND.

1. After the expiration of the time limited by the act of June 8, 1872, 17 Stat. 339, c. 354, for the completion of its road to Santa Fé, if not before that time, the Denver and Rio Grande Railway Company was entitled to claim the benefit of the act of March 3, 1875, 18 Stat. 482, c. 151, upon complying with its conditions. *United States* v. *Denver & Rio Grande Railway*, 1.
2. The act of March 3, 1875, 18 Stat. 482, c. 151, granting a right of way to railroads through the public lands, and authorizing them to take therefrom timber or other materials necessary for the construction of their roadways, station buildings, depots, machine-shops, sidetracks, turnouts, water stations, etc., permits a railway company to use the timber or material so taken on portions of its line remote from the place from which it is taken. *Ib.*
3. It is not decided that the act of March 3, 1875, gave a right to take timber from the public domain for making rolling stock; nor what structure, if any, not enumerated in that act would constitute necessary, essential, or constituent parts of a railroad. *Ib.*
4. Under the authority conferred upon the Secretary of the Treasury by the act of May 14, 1890, 26 Stat. 109, c. 207, entitled "An act to provide for town site entries of lands in what is known as 'Oklahoma,'

and for other purposes," it was entirely competent for the Secretary to provide for an appeal to the Commissioner of the General Land Office in case of contest. *McDaid* v. *Oklahoma Territory*, 209.

5. When an appeal from a decision of the trustees appointed by the Secretary under the provisions of that act was duly taken, it became the duty of the trustees to decline to issue a deed to the appellee until the appeal was disposed of. *Ib.*
6. The general rule laid down in *Garland* v. *Wynn*, 20 How. 6, following in principle *Comegys* v. *Vasse*, 1 Pet. 193, 212, and maintained in *Monroe Cattle Co.* v. *Becker*, 147 U. S. 47, 57, that where several parties set up conflicting claims to property, with which a special tribunal may deal, as between one party and the government, regardless of the rights of others, the latter may come into the ordinary courts of justice, and litigate their conflicting claims, is announced to be the settled doctrine of this court. *Turner* v. *Sawyer*, 578.

See STATUTE, A, 1, 2.

RAILROAD.

1. In its ordinary acceptation and enlarged sense, the term "railroad" includes all structures which are necessary and essential to its operation. *United States* v. *Denver & Rio Grande Railway Co.*, 1.
2. On the 10th of February, 1879, the Council Bluffs and St. Louis Railway Company leased their projected railway from Council Bluffs to the state line to the St. Louis, Kansas City and Northern Railway Company for the term of 91 years. Together the lines formed the Omaha Division of the Wabash system. On the 15th of February, 1879, the lessee issued bonds to the amount of $2,350,000, secured by a mortgage to the United States Trust Company, to complete and equip the division. In November, 1879, the lessee was consolidated with the Wabash Railway Company, under the name of the Wabash, St. Louis and Pacific Railway Company. The new corporation assumed all the obligations of the old ones, entered into possession of all the property, issued bonds to the amount of $17,000,000, secured by a general mortgage to the Central Trust Company, and other bonds, and continued to operate the property down to May, 1884, when it filed a bill alleging its own insolvency, and asking the court to appoint receivers of all its property, which was done. A preferential indebtedness was recognized by the court to the extent of $4,378,233.49, which the receivers were directed to pay. The rentals and interest amounted to $2,175,062, of which $82,250 was for the rent of the Omaha Division. These also were ordered to be paid by the receivers. It turned out, practically, that so far from being able to make all these payments out of earnings, they were never enough to pay the preferential debts, and that the Omaha Division was operated at an actual loss, without taking the rental into account.

These facts were made known to the court by the receivers in March, 1885, whereupon it ordered, in April, 1885, that the subdivisional accounts be kept separately, and that no rent or subdivisional interest be paid where a subdivision earned no surplus. It also ordered the preferential debts to be paid before rentals. The instalment of rent or interest on the Omaha Division due in April, 1885, not being paid, a bill was filed to foreclose the mortgage upon it, and when a default took place in the payments due in October, 1885, a receiver was asked for. In the following March a receiver was appointed as asked for, and the Omaha Division was surrendered to him by the general receivers of the Wabash system. He intervened in the Wabash suit, praying for payment by the general receivers of the overdue rent on the Omaha Division, amounting to $222,075.77. A decree of foreclosure and sale of the Wabash system, under the general mortgage, was entered, which reserved specially all rights under the Omaha Division, and under this decree a sale was made and the property was transferred to a new corporation called the Wabash Western Railway Company. The petition for the payment of rent of the Omaha Division, after reference to a master and report by him, resulted in a decree for the payment of one month's rent with interest, instead of sixteen months, as prayed for. *Held*, (1) That the court was bound to take into consideration the peculiar circumstances under which the receivers took possession of and operated the Wabash system; (2) That, following *Quincy, Missouri &c. Railroad* v. *Humphreys*, 145 U. S. 82, the court did not bind itself or its receivers to pay the agreed rent *eo instanti* by the mere act of taking possession, but that reasonable time had to be taken to ascertain the situation of affairs; (3) That the order made by the court below to pay the rents only after the discharge of the preferential debts was correct; (4) That the owners of the Omaha branch, or the trustees of its mortgage, knowing that that branch was in the hands of the general receivers, might have intervened in that suit for the protection of their property, and were bound by the order for payment of the preferential debts; as it is settled that whenever, in the course of a receivership, the court makes an order which the parties to the suit consider injurious to their interests, it is their duty to file a motion at once asking the court to cancel or to modify it; (5) That the petition of the receivers of March, 1885, and the order of the court thereupon touching subdivision earnings, was notice to the branch lines that they must not expect payment of their rent, when the subdivision earned nothing beyond operating expenses; (6) That as the mortgage to the United States Trust Company did not convey the income or earnings of the road to it, but only authorized it to take possession in case of default, the trustee could only secure the earnings by taking possession in such case; (7) That until the mortgagee asserted its rights under the mortgage to the possession of the road by filing a bill of foreclosure,

and by demanding possession, it had no right to receive the earnings and profits; (8) That the judgment of the court below, awarding a recovery of only one month's rent, was right. *United States Trust Co.* v. *Wabash Western Railway*, 287.

3. The general rule applicable to this class of cases is, that an assignee or receiver is not bound to adopt the contracts, accept the leases, or otherwise step into the shoes of his assignor, if, in his opinion, it would be unprofitable or undesirable to do so. *Ib.*
4. In such case a receiver is entitled to a reasonable time in which to elect whether he will adopt or repudiate such contracts. *Ib.*
5. If a receiver in a suit for foreclosing a railway mortgage elects to adopt a lease, he becomes vested with the title to the leasehold interest, and a priority of estate is thereby created between the lessor and the receiver, by which the latter becomes liable upon the covenant to pay rent. *Ib.*

See PUBLIC LAND, 1, 2, 3.

RECEIPT.

See PLEADING, 1.

RECEIVER.

See NATIONAL BANK;
RAILROAD, 2, 3, 4, 5.

RULE.

See COSTS.

SALARY.

1. The Supervising Architect of the Treasury is not entitled to extra compensation, above his salary, for planning and supervising the erection of a department building in Washington, occupied by other departments of the government. *Mullett* v. *United States*, 566.
2. In this case the delay in bringing suit leads to the conclusion that the architect recognized the work for which he sues as within the scope of his regular duties. *Ib.*
3. The payment to an Indian agent of the amount appropriated by Congress for the payment of his salary being less than the amount fixed by general law as the salary of the office, and his receipt of the sum paid "in full of my pay for services for the period herein expressed,' is a full satisfaction of the claim. *Belknap* v. *United States*, 588.

See NATIONAL BANK, 2.

SALE ON EXECUTION.

By the laws of Colorado, title to land sold under execution remains in the judgment debtor till the deed is executed. *Turner* v. *Sawyer*, 578.

See ABATEMENT;
MINERAL LAND.

SATISFACTION.

See SALARY, 3.

SERVICE OF PROCESS.

It is a sufficient service of a subpœna upon a foreign steamship company, which has within the district no officer, and no agent expressly authorized to accept service, to serve it upon its financial agent, at his office, at which the financial and monetary business of the company in this country is transacted, and which has been advertised by the company as its own office; although the docks of the company, where its steamships land and take and discharge cargo, and its office for the transaction of matters connected with its actual industrial operations in this country, are in another district. *In re Hohorst*, 653.

SPECIAL VERDICT.

When a special verdict is rendered, all the facts essential to entitle a party to a judgment must be found. *Ward* v. *Cochran*, 597.

SUPERVISING ARCHITECT OF THE TREASURY.

See SALARY, 1.

STATUTE.

A. CONSTRUCTION OF STATUTES.

1. While it is well settled that public grants are to be construed strictly as against the grantees, they are not to be so construed as to defeat the intent of the legislature, or to withhold what is given. *United States* v. *Denver & Rio Grande Railway*, 1.
2. General legislation, offering advantages in the public lands to individuals or corporations as an inducement to the accomplishment of enterprises of a *quasi* public character through undeveloped public domain should receive a more liberal construction than is given to an ordinary private grant. *Ib.*
3. The construction placed by a state court upon one statute implies no obligation on its part to put the same construction upon a different statute, though the language of the two may be similar. *Wood* v. *Brady*, 18.

See JURISDICTION, E.

B. STATUTES OF THE UNITED STATES.

See ADMIRALTY, 3, 4;
ALASKA, 1;
CONSTITUTIONAL LAW;
CUSTOMS DUTIES, 1, 2, 3;
FEES, 1, 2;
JURISDICTION, A, 7 to 10, 11, 16, 18; C, 6, 7; D, 1, 2, 4, 5; E.
MINERAL LAND;
MORMON CHURCH;
NATIONAL BANK, 1, 2;
NEW TRIAL, 3;
PUBLIC LAND, 1, 2, 3, 4;
WITNESS, 2.

C. STATUTES OF STATES AND TERRITORIES.

Arkansas.	*See* COURT AND JURY, 1.
Colorado.	*See* SALE ON EXECUTION.
Massachusetts.	*See* JURISDICTION, A, 12.
Montana.	*See* CONTRACT, 1.
Virginia.	*See* JURISDICTION, A, 21.

SUBROGATION.

See COMMON CARRIER, 1, 2.

TOWN-SITES.

See PUBLIC LAND, 4, 5.

TRADE-MARK.

1. A person cannot acquire a right to the exclusive use of the word "Columbia" as a trade-mark. *Columbia Mill Company* v. *Alcorn*, 460.
2. To acquire a right to the exclusive use of a name, device, or symbol as a trade-mark, it must appear that it was adopted for the purpose of identifying the origin or ownership of the article to which it is attached, or that such trade-mark points distinctively to the origin, manufacture, or ownership of the article on which it is stamped, and is designed to indicate the owner or producer of the commodity, and to distinguish it from like articles manufactured by others. *Ib.*
3. If a device, mark, or symbol is adopted or placed upon an article for the purpose of identifying its class, grade, style, or quality, or for any purpose other than a reference to or indication of its ownership, it cannot be sustained as a valid trade-mark. *Ib.*
4. The exclusive right to the use of a mark or device claimed as a trade-mark is founded on priority of appropriation, and it must appear that the claimant of it was the first to use or employ it on like articles of production. *Ib.*
5. A trade-mark cannot consist of words in common use as designating locality, section, or region of country. *Ib.*
6. In the case of an alleged violation of a valid trade-mark, the similarity of brands must be such as to mislead ordinary observers, in order to justify a restraining injunction. *Ib.*

TRUST.

See CORPORATION, 6, 7;
COTENANT;
PARTNERSHIP, 2.

VERDICT.

See SPECIAL VERDICT.

WITNESS.

1. The question of excluding a witness, pending the testimony of other witnesses in a trial for murder, is within the discretion of the trial court; but if a witness disobeys the order of withdrawal, he is not thereby disqualified, but may be proceeded against for contempt, and his testimony is open to comment to the jury by reason of his conduct. *Holder* v. *United States*, 91.
2. Under the provisions in the act of March 16, 1878, 20 Stat. 30, c. 37, H. at the trial offered himself as a witness in his own behalf. In charging the jury the court said: "The defendant has gone upon the stand in this case and made his statement. You are to weigh its reasonableness, its probability, its consistency, and above all you consider it in the light of the other evidence, in the sight of the other facts. If he is contradicted by other reliable facts, that goes against him, goes against his evidence. You may explain it perhaps on the theory of an honest mistake or a case of forgetfulness, but if there is a conflict as to material facts between his statements and the statements of the other witnesses who are telling the truth, then you would have a contradiction that would weigh against the statements of the defendant as coming from such witnesses." *Held*, that this was error, as it tended to defeat the wise and humane provision of the law that "the person charged shall, at his own request, but not otherwise, be a *competent* witness." *Hicks* v. *United States*, 442.
3. An action to recover a penalty under that act, though in form a civil action, is unquestionably criminal in its nature, and the defendant cannot be compelled to be a witness against himself. *Lees* v. *United States*, 476.

WRIT OF ERROR.

See APPEAL.